

PUBLIC SUBMISSION

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Docket: EPA-R03-OW-2010-0736
Draft Chesapeake Bay Total Maximum Daily Load

Comment On: EPA-R03-OW-2010-0736-0001
Clean Water Act Section 303(d): Notice for the Public Review of the Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay

Document: EPA-R03-OW-2010-0736-0335
Comment submitted by William H. Halprin, Tidewater Builders Association

Submitter Information

Submitter's Representative: William H. Halprin
Organization: Tidewater Builders Association

General Comment

On behalf of the Tidewater Builders Association, please accept our comments on the U.S. Environmental Protection Agency's (EPA) proposed Total Maximum Daily Load (TMDL) for the Chesapeake Bay. Our comments are being supplied in the spirit of improving a proposed regulatory program that will prove to be challenging for our industry.

TBA is a trade association representing nearly 700 members firms involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction in the Hampton Roads region of Virginia. Because of the nature of their work, many of our members must obtain and operate pursuant to National Pollutant Discharge Elimination System (NPDES) permits for controlling the stormwater discharges stemming from their construction activities. The Chesapeake Bay TMDL's requirements will become a part of the stormwater permits issued for homebuilding projects in the Hampton Roads area.

Throughout the development of the TMDL, our members operating within the watershed have consistently voiced interest in restoring the Bay using cost-effective, balanced, and sustainable solutions that facilitate economic growth and preserve the ability of a growing population to live, work, and play in the watershed. In fact, here in the eastern portion of Virginia, we have been conducting business under the auspices of the Commonwealth's Chesapeake Bay Preservation Act for over 20 years. We therefore have a history of developing homes and businesses while protecting the Chesapeake Bay.

To reach this reasonable, responsible, and realistic restoration plan, we believe the EPA and state agencies must develop and adopt TMDL and implementation plans that allow for and invite broad public participation; are based on defensible modeling and data; are cost-effective and affordable; are understandable; are fair and equitable; and are flexible and invite innovation.

Given the complex nature of the TMDL, and the quantified significant costs to all involved, the 45-day public comment period is inadequate and should be immediately extended. For the EPA to impose this level of impact on the well-being of the Commonwealth, its citizens and its businesses, while ignoring a notice requirement and cost analysis requirements of federal law (the Administrative Procedures Act and the Small business Regulatory Act), is wrong. We urge the EPA to extend the public comment period for the proposed TMDL by another 180 days to allow adequate stakeholder input to the process. We suggest that EPA provide access to the background modeling and technical decisions and assumptions that EPA has made regarding the proposal and to actually consider and act on the input it receives. Furthermore, we urge EPA to fix the modeling and publish it for public review and comment before finalizing the TMDL.

We strongly urge EPA to set up a public website dedicated to the modeling effort done for the Chesapeake Bay TMDL, post all past and new documents related to the modeling effort, and allow the public to review and comment on past and future decisions regarding the modeling. As we mentioned earlier, a lot of work has been done in eastern Virginia that we believe is not represented in the modeling. For instance, for years we have been installing 100-foot buffers and other BMP measures to reduce nutrient runoff into the bay and comply with the Chesapeake Bay Preservation Act and to our knowledge, NONE of this has been inventoried and accounted for in the modeling.

During this difficult economic period for the nation and Virginia, we find our industry along with numerous Virginia businesses, local governments, farmers and the Commonwealth itself facing an unprecedented and unfunded Federal mandate – an untenable TMDL for the Chesapeake Bay. Regrettably, the EPA has chosen not to conduct cost analysis for the Bay TMDL, and we believe this mandate will not only extend the so-called jobless recovery period, but expand it into many other sectors of the state's economy. We request that EPA complete a comprehensive cost analysis.

Finally, we have grave concerns about the most recent backstop allocations for Urban Stormwater in the WIPs for Delaware, New York, Pennsylvania, Virginia and West Virginia. Details regarding how and why the backstop allocations were derived and how they are expected to be attained are vital to understanding the TMDL as well as its overall impact. The agency must provide information on expected costs of meeting the standards and the impacts of those costs on the regional economy and the affordability of housing.

We question the wisdom and authority of the EPA to mandate that private owners reduce or retrofit their property's impervious surfaces. We urge the EPA to seek other less expensive and less intrusive solutions to the clean up of the Bay and its tributaries.

On behalf of our member firms, employees and homebuyers in Hampton Roads, thank you for the opportunity to comment on this complex TMDL.

Sincerely,

William H. Halprin
President